

DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
SPECIAL EDUCATION PROGRAMS AND SERVICES

Filed with the Secretary of State on September 7, 2004.
These rules take effect on September 15, 2004.

(By authority conferred on the state board of education by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and 380.1703)

R 340.1713, R 340.1715, R 340.1722a, R 340.1733, R 340.1749a, R 340.1749b, R 340.1756, R 340.1758, R 340.1799 of the Michigan Administrative Code are amended; and R 340.1717, are added to the Code as follows:

PART 1.
GENERAL PROVISIONS

R 340.1713 Specific learning disability defined; determination.

Rule 13. (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual impairments, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of a visual, hearing, or motor impairment, of a cognitive impairment, of an emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.

(2) The individualized education program team may determine that a child has a specific learning disability if the child does not achieve commensurate with his or her age and ability levels in 1 or more of the areas listed in this subrule, when provided with learning experiences appropriate for the child's age and ability levels, and if the multidisciplinary evaluation team finds that a child has a severe discrepancy between achievement and intellectual ability in 1 or more of the following areas:

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading comprehension.
- (f) Mathematics calculation.
- (g) Mathematics reasoning.

(3) The individualized education program team shall not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of any of the following:

- (a) A visual, hearing, or motor impairment.
- (b) Cognitive impairment.
- (c) Emotional impairment.
- (d) Autism spectrum disorder.
- (e) Environmental, cultural, or economic disadvantage.

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(4) At least 1 individualized education program team member other than the student's general education teacher shall observe the student's academic performance in the general education classroom setting. For a child who is less than school age or who is out of school, an individualized education program team member shall observe the child in an environment appropriate for a child of that age.

(5) For a student suspected of having a specific learning disability, the documentation of the individualized education program team's determination of eligibility shall include a statement concerning all of the following:

- (a) Whether the student has a specific learning disability.
- (b) The basis for making the determination.
- (c) The relevant behavior noted during the observation of the student.
- (d) The relationship of that behavior to the student's academic functioning.
- (e) The educationally relevant medical findings, if any.
- (f) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.
- (g) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(6) Each individualized education program team member shall certify, in writing, whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusions.

(7) A determination of learning disability shall be based upon a comprehensive evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:

(a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.

(b) At least 1 person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.

R 340.1715 Autism spectrum disorder defined; determination.

Rule 15. (1) Autism spectrum disorder is considered a lifelong developmental disability that adversely affects a student's educational performance in 1 or more of the following performance areas:

- (a) Academic.
- (b) Behavioral.
- (c) Social.

Autism spectrum disorder is typically manifested before 36 months of age. A child who first manifests the characteristics after age 3 may also meet criteria. Autism spectrum disorder is characterized by qualitative impairments in reciprocal social interactions, qualitative impairments in communication, and restricted range of interests/repetitive behavior.

(2) Determination for eligibility shall include all of the following:

(a) Qualitative impairments in reciprocal social interactions including at least 2 of the following areas:

(i) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.

(ii) Failure to develop peer relationships appropriate to developmental level.

(iii) Marked impairment in spontaneous seeking to share enjoyment, interests, or achievements with other people, for example, by a lack of showing, bringing, or pointing out objects of interest.

(iv) Marked impairment in the areas of social or emotional reciprocity.

(b) Qualitative impairments in communication including at least 1 of the following:

(i) Delay in, or total lack of, the development of spoken language not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime.

(ii) Marked impairment in pragmatics or in the ability to initiate, sustain, or engage in reciprocal conversation with others.

(iii) Stereotyped and repetitive use of language or idiosyncratic language.

(iv) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

(c) Restricted, repetitive, and stereotyped behaviors including at least 1 of the following:

(i) Encompassing preoccupation with 1 or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.

(ii) Apparently inflexible adherence to specific, nonfunctional routines or rituals.

(iii) Stereotyped and repetitive motor mannerisms, for example, hand or finger flapping or twisting, or complex whole-body movements.

(iv) Persistent preoccupation with parts of objects.

(3) Determination may include unusual or inconsistent response to sensory stimuli, in combination with subdivisions (a), (b), and (c) of subrule 2 of this rule.

(4) While autism spectrum disorder may exist concurrently with other diagnoses or areas of disability, to be eligible under this rule, there shall not be a primary diagnosis of schizophrenia or emotional impairment.

(5) A determination of impairment shall be based upon a comprehensive evaluation by a multidisciplinary evaluation team including, at a minimum, a psychologist or psychiatrist, an authorized provider of speech and language under R 340.1745(d), and a school social worker.

R 340.1717 Deaf-blindness defined; determination.

Rule 17. (1) Deaf-blindness means concomitant hearing impairment and visual impairment, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs without additional supports to address the unique needs specific to deaf-blindness. Deaf-blindness also means both of the following:

(a) Documented hearing and visual losses that, if considered individually, may not meet the requirements for visual impairment or hearing impairment, but the combination of the losses affects educational performance.

(b) Such students function as if they have both a hearing and visual loss, based upon responses to auditory and visual stimuli in the environment, or during vision and hearing evaluations.

(2) A determination of the disability shall be based upon data provided by a multidisciplinary evaluation team which shall include assessment data from all of the following:

(a) Medical specialists such as any of the following:

(i) An ophthalmologist.

(ii) An optometrist.

(iii) An audiologist.

(iv) An otolaryngologist.

(v) An otologist.

(vi) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

(b) A teacher of students with visual impairment.

(c) A teacher of students with hearing impairment.

PART 2. EVALUATION, ELIGIBILITY, STUDENT ASSIGNMENT, AND DUE PROCESS PROCEDURES

R 340.1722a Implementation of individualized education program.

Rule 22a. (1) The superintendent of the school district of residence, upon receipt of the individualized education program, shall, within 7 calendar days, provide written notice to the

parent of the agency's intent to implement special education programs and services. The notice shall identify where the programs and services are to be provided and when the individualized education program begins.

(2) The parent, upon receipt of notification from the superintendent, shall have the right, at any time, to appeal the decision under R 340.1724. If the parent does not appeal, then the superintendent shall initiate the individualized education program as soon as possible, but not later than 15 school days after the parent has been notified. An initiation date may be later than 15 school days if clearly specified in the individualized education program; however, a projected initiation date shall not be used to deny or delay programs or services because they are not available and shall not be used for purposes of administrative convenience.

(3) If a student with a disability is to be provided special education or related services for the first time, then the parent has 10 calendar days after receipt of the notice from the superintendent to provide the public agency with written consent to provide special education programs and services. If the parent refuses consent or does not respond, then the public agency has the right to request a hearing under R 340.1724.

PART 3. ADMINISTRATION OF PROGRAMS AND SERVICES

R 340.1733 Program and service requirements.

Rule 33. An intermediate school district, local school district, public school academy, and any other agency shall adhere to all of the following general requirements for all programs and services for students with disabilities:

(a) Special education classrooms or areas where related services are provided shall have at least the same average number of square feet per student, light, ventilation, and heat conditions as provided for general education students in the school district.

(b) Programs for students with severe cognitive impairment and severe multiple impairments which have students under 16 years of age shall not exceed a 6-year age span at any 1 time.

(c) All other special education programs which have students under 16 years of age and which are operated in separate facilities shall not exceed a 4-year age span at any 1 time.

(d) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in elementary buildings attended by children who are nondisabled, shall not exceed, at any 1 time, a 6-year age span or the age span of the students who are nondisabled in the building, whichever is less.

(e) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in secondary buildings attended by students who are nondisabled, shall not exceed, at any 1 time, the age span of the students who are nondisabled in the building, except in high school buildings where students up to 26 years of age may be served. The term "nondisabled" shall not include persons participating in adult education programs.

(f) Programs for students with severe cognitive impairment, severe multiple impairments, and moderate cognitive impairment shall comply with subdivisions (b), (c), (d), and (e) of this rule unless a program is operated in accordance with an approved intermediate school district plan where, due to the low incidence of eligible students, expanded age ranges may be necessary for programmatic feasibility and meeting the needs of students.

(g) Students with disabilities qualifying for special education programs and services shall be provided with supplies and equipment at least equal to those provided to other students in general education programs, in addition to those supplies and equipment necessary to implement a student's individualized education program.

(h) Intermediate school districts, local school districts, public school academies, or a combination of such agencies in cooperation with public and private entities, shall provide or contract for the provision of transition services. Special education teachers shall be assigned to

supervise such services. Professional special education personnel, a transition coordinator, or both, shall coordinate transition services.

(i) For worksite-based learning, a written agreement/plan is required and shall be signed by the student, parent, school, and worksite representative. The agreement shall set forth all of the following information:

- (i) Expectations and standards of attainment.
- (ii) Job activities.
- (iii) Time and duration of the program.
- (iv) Wages to be paid to the student, if applicable.
- (v) Related instruction, if applicable.

The superintendent of the school district shall designate a staff member to visit the student's worksite at least once every 30 calendar days for the duration of the program to check attendance and student progress and assess the placement in terms of health, safety, and welfare of the student.

(j) Substitute instructional aides specified in R 340.1738, R 340.1739, and R 340.1748 shall be provided when assigned instructional aides are absent. In addition, teacher aides specified in R 340.1739 and R 340.1740 shall be provided when assigned teacher aides are absent.

(k) Secondary special education teachers shall teach either special education courses approved for graduation by the local education agency or special education courses within an approved special education curriculum.

R 340.1749a Elementary level resource program.

Rule 49a. (1) A special education elementary level resource program may be provided by a special education teacher.

(2) The elementary resource teacher shall serve not more than 10 students at any 1 time and not more than 18 different students and shall do either or both of the following:

(a) Provide direct instruction to students on the resource teacher's caseload and may assign grades or other evaluative measures for this instruction.

(b) Provide support to the general education classroom teachers to whom special education students on the resource teacher's caseload have been assigned. Time shall be allocated to the resource teacher to carry out this responsibility.

(3) The elementary resource teacher may provide supplemental instruction to students on his or her caseload.

(4) The elementary resource teacher may evaluate general education students within the same building who are suspected of having a disability and, therefore, may serve on the initial multidisciplinary evaluation team. The resource teacher shall be responsible for the evaluation of not more than 2 students at 1 time. Time shall be allocated to the resource teacher to carry out this responsibility.

(5) If the special education teacher to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the individualized educational program team shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher.

R 340.1749b Secondary level resource program.

Rule 49b. (1) A special education secondary level resource program may be provided by a special education teacher.

(2) A secondary resource teacher shall serve not more than 10 students at any 1 time and have a caseload of not more than 20 different students and shall do either or both of the following:

(a) Provide direct instruction for special education courses approved for graduation by the local educational agency. The teacher may assign grades or other evaluative measures for this instruction.

(b) Provide support to the general education classroom teachers to whom special education students on the resource room teacher's caseload have been assigned. Time shall be allocated to the resource teacher to carry out this responsibility.

(3) The secondary resource teacher may provide supplemental instruction to students on his or her caseload who are enrolled in general education classes. The teacher shall not teach a class and offer tutorial assistance at the same time.

(4) If the special education teacher to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the individualized educational program team shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher.

R 340.1756 Programs for students with severe language impairment.

Rule 56. (1) A public agency may establish programs for students with severe language impairment. Specific requirements for these programs are as follows:

(a) A program for students with severe language impairment conducted by a teacher of programs for students with speech and language impairment shall serve only young children with disabilities or developmental delay or elementary students with severe language impairment.

(b) The program shall have not more than 10 students or young children with speech and language impairment in the classroom at any 1 time, and the teacher shall have responsibility for the educational programming for not more than 15 different children.

(2) Students or young children with speech and language impairment eligible for this program are those with a severe disability in the comprehension or expression of language as determined through the manifestation of all of the following characteristics which adversely affects educational performance:

(a) Demonstration of functioning within or above normal intellectual potential as measured by instruments that do not rely exclusively on oral direction or oral expression.

(b) Test results on not less than 2 standardized assessment instruments or 2 subtests designed to determine language functioning which clearly show language functioning not appropriate for the child's mental age.

(c) Oral language at less than the expected level based on the child's mental age in not less than 2 of the following areas:

(i) Phonology.

(ii) Morphology.

(iii) Syntax.

(iv) Semantics.

(v) Pragmatics.

(3) The programs for students with severe language impairment are not designed for children whose language impairment is primarily the result of autism spectrum disorder or cognitive, emotional, hearing, visual, physical, or other health impairments as defined in part 1 of these rules.

R 340.1758 Programs for students with autism spectrum disorder.

Rule 58. (1) Specific requirements for programs for students with autism spectrum disorder shall be provided using either of the following alternatives:

(a) Programs that consist of 1 classroom program for students with autism spectrum disorder shall not have more than 5 students and shall be served by a teacher of students with autism spectrum disorder. However, programs that consist of more than 1 classroom may have more than 5 students in a classroom, if the average student-to-teacher-and-aide ratio does not exceed 5 students to 1 teacher and 1 aide. A classroom with 3 or more students shall have 1 aide.

(b) A special education program described in the intermediate school district plan set forth in R 340.1832(d) and approved by the state board of education that assures the provision of educational programming for students with autism spectrum disorder.

PART 5.
QUALIFICATIONS OF TEACHERS AND OTHER PERSONNEL

R 340.1799 Teachers of students with autism spectrum disorder; special requirements.

Rule 99. The teacher education program for teachers of students with autism spectrum disorder shall include a minimum of 30 semester or equivalent hours relating to all of the following areas:

- (a) Autism spectrum disorder, including its etiology.
- (b) Child development, with special emphasis on language, communication, and cognitive development.
- (c) Behavioral intervention techniques.
- (d) Systematic curriculum development, with special emphasis on personal adjustment and prevocational education.
- (e) Home/school interactions.
- (f) Family and community support services.